

ENFORCEMENT ACTIONS

OVERVIEW

The FDIC may initiate informal or formal action when an insured depository institution is found to be in an unsatisfactory condition. Informal actions represent the final supervisory step before formal enforcement proceedings are initiated.

While moral suasion remains the primary informal corrective tool, the FDIC has broad enforcement powers under the Federal Deposit Insurance (FDI) Act to issue formal enforcement actions.

Objective(s)

The objective of this section is to:

- Provide a brief summary of the types of informal and formal actions that the FDIC has the authority to issue

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DEFINITION(S)

Informal

Informal actions are voluntary agreements between the FDIC and the board of directors/trustees of a financial institution. They are designed to ensure compliance with federal and state banking laws and regulations. Informal actions are neither public nor legally enforceable.

The most common informal enforcement actions used by the FDIC are the following:

- **Board Resolution**

Informal agreements developed and adopted by a financial institution's board of directors/trustees, often at the request of a FDIC Regional Manager, directing the institution's personnel to take corrective action regarding specific noted deficiencies. The FDIC is not a party to the resolution, but approves and accepts the resolution as a means to initiate corrective action.

DEFINITION(S) • **Memorandum of Understanding****Informal**

Informal action drafted by the DCA Regional Office staff to address and correct identified weaknesses in an institution's compliance or CRA posture. A Memorandum of Understanding is generally used in place of a board resolution, especially when the FDIC has reason to believe deficiencies noted during the examination may not be addressed adequately by an institution's board resolution.

Formal

The FDIC's Board of Directors has been given broad enforcement powers to issue formal enforcement actions. There is no concise definition of formal enforcement actions since the broadness of the FDIC's enforcement powers is evident under Section 8 of the FDI Act. Each situation and circumstance determines the most appropriate action to be taken.

Formal actions used in connection with compliance matters may include the following:

- **Termination of Insurance** (Section 8(a))
- **Cease-and-Desist Order** (Section 8(b))

Issued to halt violations of law as well as to require affirmative action to correct any condition resulting from such violations. By ordering an institution, or an institution affiliated party (IAP), to cease and desist from practices and/or take affirmative actions, the FDIC may prevent the problems facing the institution from reaching such serious proportions as to require more severe enforcement actions.

- **Temporary Cease-and-Desist Order** (Section 8(c))

Issued in the most severe situations to halt particularly egregious practices pending formal hearing on permanent Cease-and-Desist Orders (Section 8(b)).

- **Removal and Prohibition Order** (Section 8(e)(1))

The FDIC has the authority to order the removal of an IAP [director, officer, employee, controlling stockholder] (other than a bank holding company) or agent for an insured depository institution. The prohibition may be for specific activities or may be industry wide.

DEFINITION(S)
(cont'd)**Formal (cont'd)**

- **Temporary Suspension Order** (Section 8(e)(3))

The FDIC may order the temporary suspension of an IAP pending a hearing on an Order of Removal if the individual's continued participation poses an immediate threat to the institution or to the interests of the institution's depositors.

- **Suspension Order** (Section 8(g))

Issued to institution affiliated parties who are charged with felonies involving dishonesty or a breach of trust pending the disposition of the criminal charges.

- **Civil Money Penalties**(Section 8(i)(2))

Assessed to sanction an institution or IAP according to the degree of culpability and severity of the violation, breach, and/or practice and also to deter future occurrences.

- **Investigation** (Section 10(c))

Conducted to obtain needed information or evidence

PROCEDURES

Examiners are expected to refer to and follow the guidelines that are set forth in the Formal and Informal Actions Procedures (FIAP) Manual issued jointly by DOS/DCA in October 1996.

**FDIC LAW,
REGULATIONS,
& RELATED
ACTS****Applicable Rules**Federal Deposit Insurance Act, Volume 1, Page 1001

**Advisory
Opinions**None

**Statements of
Policy**Interagency Policy Statement Regarding the Assessment of Civil Money Penalties
by the Federal Financial Institutions Regulatory Agencies, Volume 2, Page 5201

**DCA
MEMORANDA**Assessment of Civil Money Penalties, Transmittal #DCA-96-008, dated 3/11/96

**FINANCIAL
INSTITUTION
LETTERS (FIL)**None

OTHEROCC News Release, Department of Justice Opinion Released on Enforcement
Action on CRA, dated 12/15/94
